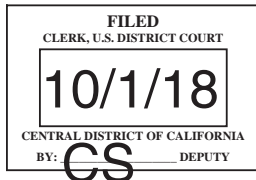


UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Howard Broomfield,
Petitioner,

v.

United States of America,
Respondent.



28 USC §2255 Second-in-time Petition
Based on new Intervening Judgment.

CV18-8434-CBM

Case No. CR No. 95-0165-CMB

The Honorable Consuelo B. Marshall
United States District Judge

Factual Background and Procedural History

In February of 1996, a jury convicted Petitioner Howard Broomfield of twelve counts of narcotics related charges under 21 USC § 846, 21 USC § 841, and 21 USC § 848. On June 17, 1996 the court sentenced Petitioner to Life in prison. Petitioner appealed his federal sentence to the Ninth Circuit on June 20th 1996. On August 27th 1998, the Ninth Circuit affirmed Petitioner's conviction and sentence in an unpublished decision, United States v. James Broomfield, 1998 WL 551971 (9th Cir. 1998).

Petitioner filed a motion to vacate, set aside, or correct sentence pursuant to 28 USC § 2255 on January 13th, 2000, claiming inter alia, ineffective assistance of counsel for failure to object to jury instruction regarding the "supervisor" element of the CCE charge, among other issues. (CR 95-165-CBM, Dkt No. 508). On November 5, 2004 the district court (The Honorable Consuelo B. Marshall) granted the motion in part, and the government appealed. (CV 00-586-HLH, Dkt No. 20). On February 9th, 2006, the Ninth Circuit reversed the district court. Broomfield, 172 Fed Appx. 743, *1.

NOW COMES, Petitioner, Howard Broomfield, pro se, pursuant to 28 USC §2255 "Second-in-Time" petition based on new intervening judgment. Based on the new intervening judgment, Petitioner's 1984 case that the government used to enhance Petitioner pursuant to 21 USC §851 no longer qualifies as a felony drug offense that can be used for

enhancement purposes pursuant to 21 USC §851 because the Ninth Circuit Court of Appeals has determined that California Health and Safety Code §11378 is overbroad and divisible, see United States v. Luis Ocampo-Estrada, 868 F. 3d 1101; 873 F. 3d 661, 2017 U.S. App Lexis 16511.

Petitioner further argues that the sentencing Judge never inquired before sentencing whether the Petitioner affirms or denies (the prior conviction) the sentencing Judge also never informed Petitioner to the fact that any challenge to a prior conviction is waived if not made before sentencing; which is a strict compliance with the procedural aspects of Section§851(b). The §851(b) colloquy is not merely a procedural requirement , it serves a functional purpose to place the procedural onus on the district court to ensure defendants are fully aware of thier rights. see United States v. Rodriguez, 851 F.3d 931, 946 (9th Cir 2017).

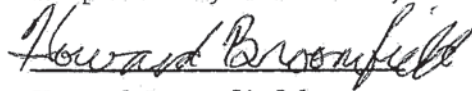
Conclusion

Based on the now available new intervening Judgment; Petitioner prays that this honorable court vacate, modify and correct Petitioner's sentence.

Dated: August 25th 2018

See Exhibit A

Respectfully Submitted,



Howard Broomfield
Reg No. 03205-112
FCI Victorville Medium I
PO Box 3725
Adelanto, CA 92301

Certificate of Service

I Howard Broomfield , hereby certify that I have served a true and correct copy of the following. This action is deemed filed at the time it was delivered to prison authorities for forwarding, see Houston v. Lack, 101 L.Ed 2d 245 (1988), upon the defendant of record by placing this motion in a sealed postage prepaid envelope addressed to:

The Clerk of the Court
For the United States Court
For the Central District of California
312 North Spring Street
Los Angeles, CA 90012

I declare under penalty of perjury that the foregoing is true and correct pursuant to 28 USC § 1746

Dated: August 25th 2018

Respectfully Submitted,

Howard Broomfield

Howard Broomfield
Reg No. 03205-112
FCT Victorville Medium I
PO Box 3725
Adelanto, CA 92301

EXHIBIT A

The 1984 prior

REPORT-INDETERMINATE SENTENCE,
OTHER SENTENCE CHOICE

FORM CR

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
COURT I.D.

LOS ANGELES

BRANCH CENTRAL CRIMINAL

1,900,01

CASE NUMBER(S)

A750657 - A

- B

- C

- D

- E

PEOPLE OF THE STATE OF CALIFORNIA
DEFENDANT: BROOMFIELD, HOWARDVERSUS ☒ PRESENT☐ NOT PRESENT

AKA:

REPORT TO JUDICIAL COUNCIL OF: ☐ INDETERMINATE SENTENCE
TO STATE PRISON ☒ SENTENCE CHOICE OTHER THAN STATE PRISONDATE OF HEARING
(MO) (DAY) (YR)

10 23 85

DEPT. NO.

123

JUDGE

DAVID A. HOROWITZ

CLERK

A. ARBUCKLE

REPORTER

V. ANDERSON

COUNSEL FOR PEOPLE

S. WEISS

COUNSEL FOR DEFENDANT

S. WEISS

PROBATION NO. OR PROBATION OFF

X061904

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES:

ENHANCEMENTS
(CHARGED AND FOUND)A. ☐ ADDITIONAL COUNTS ARE LISTED ON
ATTACHMENT

A. <input type="checkbox"/> ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT _____				YEAR CRIME COMMITTED	DATE OF CONVICTION			CONVICTION BY		654 STAY	ENHANCEMENTS								
COUNT	CODE	SECTION NUMBER	CRIME		MO	DAY	YEAR	JURY TRIAL	COURT TRIAL		PLEA	12022.(a)	12022.(b)	12022.3.(a)	12022.3.(b)	12022.5	12022.6.(a)	12022.6.(b)	12022.7
1	HS	11378.5	POSS PCP F/SALE	84	07	02	85	X											

2. A. Number of prior prison terms charged and found

B. Number of prior felony convictions

SECTION	NUMBER
667.5(a)	0
667.5(b)	0
667.6(b)	0

SECTION	NUMBER
667.6(a)	0

3. ☐ Defendant was sentenced to death on counts _____, _____, _____, _____, _____.4. ☐ Defendant was sentenced to State Prison:A. ☐ For life, or a term such as 15 or 25 years to life, with possibility of parole, on counts _____, _____, _____, _____, _____.B. ☐ For life without the possibility of parole on counts _____, _____, _____, _____, _____.C. ☐ For other term prescribed by law on counts _____, _____, _____, _____, _____.5. ☐ Counts _____, _____, _____, _____, were deemed misdemeanors.A. ☐ Defendant sentenced to _____ days in county jail for all counts.B. ☐ Defendant fined in sum of \$ _____.6. ☒ For counts 1, _____, _____, _____, the defendant was placed on probation.A. (1) ☐ Sentence pronounced and execution of sentence was suspended; or(2) ☒ Imposition of sentence was suspended.B. Conditions of probation included ☒ Jail Time 180 days ☐ Fine

7. Other dispositions

A. ☐ Defendant was committed to California Youth Authority.B. ☐ Proceedings suspended, and defendant was committed to California Rehabilitation Center.C. ☐ Proceedings suspended, and defendant was committed as a Mentally Disordered Sex Offender.D. ☐ Proceedings suspended, and defendant was committed as mentally incompetent.E. ☐ Other (Specify) _____

NOTE: PURSUANT TO ARTICLE VI, SECTION 6 OF THE CALIFORNIA CONSTITUTION AND SECTION 68505 OF THE GOVERNMENT CODE CHIEF JUSTICE REQUIRES THAT EACH SUPERIOR COURT SHALL COMPLETE THIS FORM FOR EACH INDETERMINATE SENTENCE STATE PRISON OR SENTENCE CHOICE OTHER THAN STATE PRISON. THE REPORTS IMPLEMENT SECTION 1170.4 OF THE PENAL AND SHALL BE MAILED TO: ADMINISTRATIVE OFFICE OF THE COURTS, 350 McALLISTER, 3200 STATE BUILDING, SAN FRANCISCO, CALIFORNIA 94102

DATE

NOV - 5 1985

SIGNATURE OF CLERK

REPORT-INDETERMINATE SENTENCE,
OTHER SENTENCE CHOICEConst., Art.
Pen C. 1170.4,

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Howard Broomfield,
Petitioner,

28 USC §2255 Second-in-time Petition
Based on new Intervening Judgment.

v.

Case No. CR No. 95-0165-CMB

United States of America,
Respondent.

The Honorable Consuelo B. Marshall
United States District Judge

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In February of 1996, a jury convicted Petitioner Howard Broomfield of twelve counts of narcotics related charges under 21 USC § 846, 21 USC § 841, and 21 USC § 848. On June 17, 1996 the court sentenced Petitioner to Life in prison. Petitioner appealed his federal sentence to the Ninth Circuit on June 20th 1996. On August 27th 1998, the Ninth Circuit affirmed Petitioner's conviction and sentence in an unpublished decision, United States v. James Broomfield, 1998 WL 551971 (9th Cir. 1998).

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NOW COMES, Petitioner, Howard Broomfield, pro se, pursuant to 28 USC §2255 "Second-in-Time" petition based on new intervening judgment. Based on the new intervening judgment, Petitioner's 1984 case that the government used to enhance Petitioner pursuant to 21 USC §851 no longer qualifies as a felony drug offense that can be used for

enhancement purposes pursuant to 21 USC §851 because the Ninth Circuit Court of Appeals has determined that California Health and Safety Code §11378 is overbroad and divisible, see United States v. Luis Ocampo-Estrada, 868 F. 3d 1101; 873 F. 3d 661, 2017 U.S. App Lexis 16511.

Petitioner further argues that the sentencing Judge never inquired before sentencing whether the Petitioner affirms or denies (the prior conviction) the sentencing Judge also never informed Petitioner to the fact that any challenge to a prior conviction is waived if not made before sentencing; which is a strict compliance with the procedural aspects of Section§851(b). The §851(b) colloquy is not merely a procedural requirement , it serves a functional purpose to place the procedural onus on the district court to ensure defendants are fully aware of thier rights. see United States v. Rodriguez, 851 F.3d 931, 946 (9th Cir 2017).

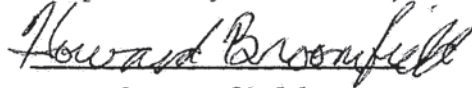
Conclusion

Based on the now available new intervening Judgment; Petitioner prays that this honorable court vacate, modify and correct Petitioner's sentence.

Dated: August 25th 2018

See Exhibit A

Respectfully Submitted,



Howard Broomfield
Reg No. 03205-112
FCI Victorville Medium I
PO Box 3725
Adelanto, CA 92301

Certificate of Service

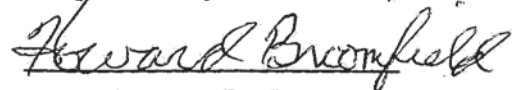
I Howard Broomfield , hereby certify that I have served a true and correct copy of the following. This action is deemed filed at the time it was delivered to prison authorities for forwarding, see Houston v. Lack, 101 L.Ed 2d 245 (1988), upon the defendant of record by placing this motion in a sealed postage prepaid envelope addressed to:

The Clerk of the Court
For the United States Court
For the Central District of California
312 North Spring Street
Los Angeles, CA 90012

I declare under penalty of perjury that the foregoing is true and correct pursuant to 28 USC § 1746

Dated: August 25th 2018

Respectfully Submitted,



Howard Broomfield
Reg No. 03205-112
FCT Victorville Medium I
PO Box 3725
Adelanto, CA 92301

EXHIBIT A

The 1984 prior

REPORT-INDETERMINATE SENTENCE,
OTHER SENTENCE CHOICE

FORM CR

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
COURT I.D. 190001 BRANCH CENTRAL CRIMINALPEOPLE OF THE STATE OF CALIFORNIA
DEFENDANT: BROOMFIELD, HOWARD
AKA:versus ☒ PRESENT
☐ NOT PRESENTCASE NUMBER(S)
A750657 - A
- B
- C
- D
- EREPORT TO JUDICIAL COUNCIL OF: ☐ INDETERMINATE SENTENCE
TO STATE PRISON ☒ SENTENCE CHOICE OTHER THAN STATE PRISONDATE OF HEARING (MO) (DAY) (YR) 10 23 85 DEPT. NO. 123 JUDGE DAVID A. HOROWITZ CLERK A. ARBUCKLE
REPORTER V. ANDERSON COUNSEL FOR PEOPLE S. WEISS COUNSEL FOR DEFENDANT S. WEISS PROBATION NO. OR PROBATION OFFI X061904

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES:

A. ☐ ADDITIONAL COUNTS ARE LISTED ON
ATTACHMENT

COUNT	CODE	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION			CONVICTION BY		ENHANCEMENTS (CHARGED AND FOUND)							
					MO	DAY	YEAR	JURY TRIAL	COURT TRIAL	PLEA	664 STAY	12022(a)	12022(b)	12022.3(a)	12022.3(b)	12022.5	12022.6(a)
1	HS	11378.5	POSS PCP F/SALE	84	07	02	85	X									

2. A. Number of prior prison terms charged and found

SECTION	NUMBER
667.5(a)	0
667.5(b)	0
667.6(b)	0

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SECTION	NUMBER
667.6(a)	0

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NUMBERB. ☐ Defendant fined in sum of \$ _____.6. ☒ For counts 1, _____, _____, _____, the defendant was placed on probation.A. (1) ☐ Sentence pronounced and execution of sentence was suspended; or(2) ☒ Imposition of sentence was suspended.B. Conditions of probation included ☒ Jail Time 180 days ☐ Fine

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DATE

NOV - 5 1985

SIGNATURE OF CLERK

REPORT-INDETERMINATE SENTENCE,
OTHER SENTENCE CHOICEConst., Art.
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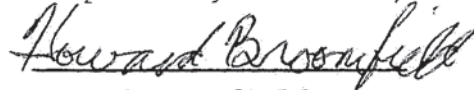
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Dated: August 25th 2018

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Howard Broomfield
Reg No. 03205-112
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PO Box 3725
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The 1984 prior

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
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DEFENDANT: BROOMFIELD, HOWARDVERSUS ☒ PRESENT
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A750657 - A
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REPORT TO JUDICIAL COUNCIL OF: ☐ INDETERMINATE SENTENCE
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A. ☐ ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT

A. <input type="checkbox"/> ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT _____										[CHARGED AND FOUND]																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																						
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